



Recent Developments in Physician-Assisted Suicide

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LITIGATION

1. *Kevorkian v. Thompson*, 947 F.Supp. 1152 (E.D. Mich. 1997), appeal pending (6th Cir. No. 97-1094). Dr. Kevorkian and Janet Good filed suit asking for an injunction forbidding prosecutors in three counties from using Michigan's temporary criminal statute to prosecute various assisted suicides that occurred during 1992 and 1993. On 1/6/97, U.S. District Judge Gerald Rosen ruled against the plaintiffs, finding that: (1) the court should abstain under *Younger v. Harris* from deciding Dr. Kevorkian's claims because they could be raised by him in defending actions pending against him in state courts, (2) Janet Good had no constitutional right to assisted suicide under the Fourteenth Amendment, and (3) Michigan laws regarding assisted suicide were unconstitutionally vague prior to December 1992, when a state criminal statute was enacted. On 10/28/97, the Sixth Circuit denied plaintiffs' motion to remand the pending appeal. Final briefs and requests for oral argument were filed by the parties during June 1998.

2. *Sampson v. Alaska*, No. 3AN-98- CIV(Alaska Super. Ct.). On 12/15/98, Kevin Sampson (a 43-year-old man who is HIV-positive) and "Jane Doe" (a female cancer patient) filed suit asking for an injunction forbidding prosecutors from using Alaska's temporary criminal statute to prosecute various assisted suicides that occurred during 1997 and 1998.

state legislature in 1999 to legalize physician-assisted suicide and active euthanasia. On 2/6/99, however, members of the House Health Committee voted unanimously to hold a physician-assisted suicide bill in committee, effectively killing the bill. A similar measure

prescriptions for lethal medication but never used them, five died from double effect dosages of morphine, 14 died naturally without requesting a prescription, and the circumstances of four deaths were not known. Ann Jackson, executive director of Oregon Hospice Association (which opposed the Oregon Death with Dignity Act), said that the Act was "working well" and "giving Oregonians one more option at the end of life."

b. Oregon Health Plan. Based on an earlier decision of the Oregon Health Services Commission to include physician-assisted suicide as part of comfort care services, the Oregon Health Plan began covering physician-assisted suicide for low-income Oregonians on 12/1/98. Officials estimate that the Health Plan will pay less than \$45 for the

information has been deleted.

10. Federal legislation

a. Lethal Drug Abuse Prevention Act. The Lethal Drug Abuse Prevention Act of 1998 (H.R. 4006 and S. 2151) died in both houses of Congress upon adjournment but may be renewed in 1999. The Act would have amended the Controlled Substances Act to revoke the prescribing privileges of a physician who prescribes medication to assist in suicide or euthanasia. Nearly 60 medical and patient advocacy groups had expressed opposition to the Act because of concerns that the proposed legislation would discourage effective pain management and threaten patients' rights to privacy.

b. Pain Management Task Force. On 11/13/98, the Pain Management Task Force formed by Oregon Senator Ron Wyden and Representative Darlene Hooley held its first public event, a briefing at which speakers described the need for better pain management education among both medical providers and the public. At the briefing, Dr. Kenneth W. Kizer, Undersecretary for Health of the U.S. Department of Ve

Michigan Department of Consumer and Industry Services to cease and desist from practicing medicine by assisting in suicides without a medical license (Kevorkian's license was suspended on 8/21/92). In December 1998, as a result of the death of Thomas Youk, Department director Kathleen M. Wilbur announced that a proceeding would be filed in January in Ingham County Circuit Court charging him with the felony of practicing medicine without a license, a charge that could lead to a 2-year prison sentence.

d. Misdemeanor charges against Kevorkian and Reding. On 11/4/98, after a month-long trial, a jury convicted Dr. Jack Kevorkian of

physician for her father, William Bergman, be disciplined for failing to provide adequate pain relief prior to his death in February 1998 from lung cancer. In August 1998, the board found that pain management for Bergman "was indeed inadequate" but declined to take any disciplinary action. Although the complaint involving Bergman was unsuccessful, such complaints are on the rise. David Joranson, director of the Pain and Policy Studies Group at the University of Wisconsin, found in a 1997 survey that 8.1% of state medical board members questioned knew of physicians who had been either investigated or disciplined for undertreating pain, as compared to only 5% in 1991.

2. AMA training begins. In October 1998, the AMA launched its Educating Physicians on End of Life Care project (funded by the Robert Wood Johnson Foundation) with the first of four programs to train 250 physicians on hospice care. The AMA hopes the trainees and other physicians trained by them will reach all practicing physicians within the United States within a few years.

3. Survey of physicians. In a national survey of 1,902 physicians conducted by Mount Sinai School of Medicine in New York, about 8% of respondents reported ever having participated in physician-assisted suicide or active euthanasia. However, if physician-assisted suicide were legal, 36% said they would hasten death under some circumstances and 24% said they would provide a lethal injection. Physicians most willing to comply with patient requests for aid in dying were general internists and physicians specializing in pulmonary or geriatric care.

4. California Conference on Physician Assisted Dying. On 11/13/98, the Death with Dignity National Center of San Mateo (which supports legalization of physician-assisted suicide) held a conference on physician-assisted suicide in San Francisco, which was co-sponsored by Mayor Willie Brown and the San Francisco Medical Society. At the conference, the Center released a survey of 750 Californians conducted November 7-8 by Santa Monica-based Fairbank, Maslin, Maullin & Associates, which indicated that 71% favored allowing physicians to help terminally ill patients end their lives, 67% would vote for legalizing physician-assisted suicide, 64% believed there was too much government involvement in an individual's decision about physician-assisted death, and 59% would be more likely to vote for a legislator who supported physician-assisted suicide.

5. Michigan's Citizens for Compassionate Care. Citizens for Compassionate Care, the coalition that worked to defeat Proposal B (which would have legalized physician-assisted suicide in Michigan), has launched a campaign to educate the public about alternatives to assisted suicide. A 60-second television commercial began running statewide in November 1998, and a website has been established (<http://ccc.infobase.org>).

6. Nebraska. A statewide nonprofit organization, the Nebraska Coalition for Compassionate Care, has been formed to promote quality care at the end of life and prevent assisted suicide or euthanasia. The

12. New York survey on use of advance directives. On 1/5/99, IPRO (New York's largest independent



Halifax. On 2/27/98, at the conclusion of a preliminary hearing, Judge Hughes Randall discharged Dr. Morrison when he found the evidence was insufficient for a jury to convict

questionnaire. Results included the following:

- (1) 69% said that living wills were a good idea and 44% that they should have more legal force.
- (2) 68% said that a physician should be able to assist death by withdrawing or withholding life-sustaining treatment.